

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 7907 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the Civil
Judge?

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**USHABEN ARVINDBHAI PATEL WIDOW OF A.K.PATEL -
Petitioner(s)**

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR AS SUPEHIA for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3

GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/06/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of
the Constitution of India, the petitioner (now
through his heirs and legal representatives who has

already expired during the pendency of the present Special Civil Application) have prayed for an appropriate order, direction quashing and setting aside the impugned order passed by the respondent dated 23.02.1998 in passing the order of penalty on conclusion of Departmental Inquiry by imposing cut of Rs.200/- from the pension of the petitioner for a period of 10 years. At the outset it is required to be noted that the impugned order came to be passed in the year 1998 and the original petitioner has expired in the year 2001 and that the interim relief was not granted by this Court, therefore, the impugned order has been implemented and Rs.200/- has been deducted every month from the pension of the petitioner pursuant to the impugned order dated 23.02.1998.

2. The facts leading to the present Special Civil Application in nutshell are as under:

That the original petitioner Mr. A.K.Patel was working as Assistant director of Agriculture, Class - at Nadiad. He was served with the charge-sheet dated 16.10.1992 and Departmental Inquiry was initiated against the petitioner for three different charges / misconduct i.e. (1) That the petitioner was

serving in the Agricultural Department was helping his son who was also doing business in the name and style of "Agro Chemicals"; (2) Misuse of Government vehicle by the petitioner for his personal use; and (3) Making correction in the Log Book and making wrong and false entries, thus tempering with the record.

3. That on conclusion of the Departmental Inquiry and after giving an opportunity to the petitioner, Inquiry Officer submitted his report holding charge No.1 as not proved and charge nos. 2 and 3 as proved. It appears that a show cause notice was issued by the Competent Authority dated 16.11.1994 along with the inquiry report and the petitioner was called upon to make his submissions. That thereafter by order dated 24.05.1995, order of punishment came to be passed withholding of two annual increments with future effect. It appears that thereafter, the petitioner preferred Appeal No. 369 of 1995 before the Gujarat Civil Services Tribunal ("The Tribunal" for short). It was contended on behalf of the petitioner that while passing the order dated 23.02.1998 reply to the show cause notice dated 14.02.1995 has not been considered and/or dealt

by the Disciplinary Authority and accepting the same the Tribunal by its judgment and order dated 15.10.1996 allowed the said appeal and quashed and set aside the order dated 24.05.1995 and remanded the case to the respondents for its consideration afresh from the stage of defect and for issue of suitable orders. That thereafter, on remand, considering the reply to the show cause notice, the order passed by the Tribunal and considering the gravity of the charges proved against the petitioner more particularly, tempering with the record i.e. making correction in the Log Book and misusing the Government vehicle for his personal use, the Disciplinary Authority has passed the order dated 23.02.1998 imposing penalty of cut of Rs.200/- from the pension every month for a period of 10 years. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under article 226 of the Constitution of India.

4. Shri Supehia, learned Advocate appearing on behalf of the petitioner has assailed the impugned order by submitting that the penalty of monthly cut of Rs.200/- from the pension for a period of 10 years

is graver than the penalty of withholding of two increments with future effect and therefore, it was very much necessary to hear the petitioner and/or call upon him to file his further reply for the revised graver penalty and since, the same is not done, the order of penalty is liable to be quashed. It was further submitted that there was delay in initiating the proceedings and guidelines were not complied with and the reasons are not stated while passing the impugned order, therefore, it is requested to quash and set aside by allowing the present Special Civil Application.

5. The petition is opposed by the learned Assistant government Pleader. An affidavit-in-reply is filed on behalf of the respondent. It is submitted that on appreciation of evidence, the Inquiry Officer has found charge Nos. 2 and 3 proved against the petitioner and looking to the gravity of the charges proved against the petitioner i.e. tempering with the record of Log Book etc. and misusing the government vehicle, when the Disciplinary Authority after considering the reply has imposed the penalty of monthly cut of Rs. 200/- from the pension for a period of 10 years, it cannot be said there is any

illegality committed by the respondents and/or impugned order of punishment is in any way arbitrary. It is submitted that the matter was remanded to the Disciplinary Authority for passing an appropriate order after considering reply to the show cause notice dated 14.02.1995 and therefore, no further opportunity was required to be given to the petitioner. It is submitted that even at the time when the petitioner preferred appeal No. 369 of 1995 before the Tribunal, it was not contended by the petitioner that there was any defect in the enquiry conducted by the inquiry officer who reported dated 24.10.1994 holding that the first count of the charge was not proved, but the second and third counts mentioned were duly proved. Under the circumstances, it is requested to dismiss the present Special Civil Application.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. The Departmental Inquiry was initiated against the petitioner by issuing charge-sheet dated 16.10.1992 and after giving an opportunity to the petitioner, the Inquiry Officer has held charge Nos.

2 and 3 as proved. Charge No.2 proved against the partitioner was with regard to tempering with the record / log book and making correction in the log book and charge No.3 proved against the petitioner was with regard to misuse of Government vehicle for his personal use. Initially, the Disciplinary Authority passed an order of withholding of two annual increments with future effect. However, the same came to be set aside by the Tribunal on the technical ground that either the reply to the show cause notice dated 14.02.1995 has not been considered and/or it is not reflecting from the order that the same has been considered and therefore, the Tribunal by its judgment and order dated 15.10.1996 remanded the case to the Disciplinary Authority for its consideration afresh from the stage of defect and for issuing of suitable orders. Therefore, the Disciplinary Authority was required to consider the case from the stage of reply to the show cause notice. Thereafter after considering the reply to the show cause notice dated 14.02.1995, impugned order has been passed and after considering the gravity of the charges proved against the petitioner and misconduct committed by the petitioner. By impugned order, the Disciplinary Authority has passed an order

of cut of Rs. 200/- per month from the pension for a period of 10 years. Therefore, when the matter was at large before the Disciplinary Authority on remand and Disciplinary Authority was required to consider the case afresh from the stage of defect, the Disciplinary Authority was required to consider the reply to the show cause notice dated 14.02.1995 and therefore, no further opportunity was required to be given to the petitioner. Under the circumstances the contention on behalf of the petitioner, that when fresh order has been passed and instead of withholding of two annual increments with future effect order of cut of Rs. 200/- per month is passed from the pension, further opportunity was required to be given cannot be accepted. On that ground the order is not vitiated as while passing the impugned order the Disciplinary Authority has considered the reply to the show cause notice submitted by the petitioner dated 14.02.1995, which was required to be considered by the Disciplinary Authority considering the order dated 15.10.1996 passed by the Tribunal.

So far as the other contention on behalf of the petitioner on merits i.e. with regard to delay in initiating proceedings and proper guidelines has not

been followed is concerned, it is required to be noted that when the petitioner preferred the appeal before the Tribunal, the petitioner never contended that there was any defect in the enquiry conducted by the inquiry officer. It is required to be noted that on appreciation of evidence, the Inquiry Officer has held charge Nos. 2 and 3 proved against the petitioner and considering the charges proved against the petitioner i.e. tempering with documents / log book, making correction in the log book and misusing the government vehicle and considering the same when the Disciplinary Authority has passed the impugned order, it cannot be said that the same is in any way illegal or arbitrary which calls for interference of this Court. In the facts and circumstances of the case, the Disciplinary Authority is justified in imposing punishment by deducting Rs.200/- per month from the pension of the petitioner for a period of 10 years.

8. In the case of **Govt. of A.P. v/s. Mohd. Nasrullah Khan** reported in **AIR 2006 SC 1214**, the Hon'ble Supreme Court has considered the scope of judicial review under Article 226 of the Constitution

of India while dealing with the orders passed by the Disciplinary Authority and the Hon'ble Supreme Court has observed that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. It is also further held that its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. It is also further observed that judicial review is not akin to adjudication on merit by reappreciating the evidence as an Appellate Authority.

9. In the case of ***Y.P.Sarabhai v/s. Union Bank of India*** reported in ***AIR 2006 SC 2316***, the Hon'ble Supreme Court has observed that factual finding of the Disciplinary Authority after holding a detailed enquiry and after going through elaborate evidence are not assailable in the courts unless the breach of principles of natural justice or the violation of any rules or any material irregularity on the face of the record is alleged and shown.

10. Division Bench of this Court in unreported

judgment dated 10.05.2005 in the case of **J.H.Joshi v/s. State of Gujarat in Special Civil Application No. 5691 of 2002**, while dealing with the scope of judicial review of the discretion exercised by the employer to impose the particular penalty on the delinquent employee, after considering various decisions of the Hon'ble Supreme Court has observed that High Court cannot exercise appellate jurisdiction in such matters and substitute their opinion for the one formed by the disciplinary authority and the punishment imposed by the competent authority cannot be modified / substituted with a lesser penalty unless the Court is satisfied that the same is grossly or shockingly disproportionate or is so unreasonable that no person of reasonable prudence would have imposed such punishment in the facts and circumstances of the case.

11. For the reasons stated above, the petition fails. Rule discharged. However, there shall be no order as to costs.

[M.R.Shah, J.]

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